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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

B5

[redacted]

DATE: JUN 14 2011 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This petition, filed on September 28, 2009, seeks to classify the petitioner pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree.[1] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner argues that the recommendation letters submitted by his colleagues demonstrate "unusual interest" in his work, and thus he qualifies for the classification sought. For the reasons discussed below, the AAO will uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.--
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner received his Master of Science degree in Aeronautics and Astronautics from [redacted] in 2009 and a [redacted] degree in [redacted] in 2005. The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention

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[1] According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on August 30, 2006 as an F-1 nonimmigrant student.

is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "*NYSDOT*"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The AAO concurs with the director's finding that the petitioner's work is in an area of intrinsic merit, astronautical and space systems engineering, and that the proposed benefits of his work, advancing the understanding of and utilization of space systems, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, the AAO generally does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Along with three research papers submitted for publication, an article presented at the American Institute of Aeronautics and Astronautics (AIAA) Space 2007 Conference & Exposition, his educational qualifications, and other documentation pertaining to his accomplishments, the petitioner submitted letters of support discussing his M.S. research under the supervision of [redacted] and [redacted] and [redacted] states:

> Throughout his enrollment at [redacted] [the petitioner] has proved himself to be a highly intelligent, competent, and tenacious young research engineer, both in his Research Assistantships and his academic undertakings. I have been his advisor and also his thesis research supervisor.
>
> * * *
>
> Here are some of his research contributions:

• *Spacecraft Design-for-Demise Strategy, Analysis and Impact on LEO NASA Space Missions* Intentionally designing space missions that will reenter the Earth atmosphere in an uncontrolled manner to strictly comply with stipulated [redacted] Earth atmospheric reentry requirements is a novel objective currently gaining momentum within the space community. An uncontrolled reentry mission that completely ablates (demises) does not require a provision for integrated controlled reentry capability. Consequently, not only will such a mission design be relatively simpler and cheaper, but also mission unavailability risk due to a controlled reentry subsystem failure is eliminated, which improves mission on-orbit reliability and robustness. With funding provided by [redacted] and in collaboration with the [redacted] department, [the petitioner] conducted research on this subject for one and half years. His research produced the following findings:

- A proposal for a novel space mission life-cycle phase-by-phase implementation strategy for designing missions to demise,
- A detailed procedure to execute the Design-for-Demise (DfD) activities in a particular mission life-cycle phase to ascertain continuous thorough engagement of DfD practices in mission development and execution.
- A critical parts identification plan that hinges on decomposing the spacecraft into individual parts via a subsystems hierarchical subdivision approach.
- A DfD decision-making methodology referred to as Analytic Deliberative Process decision-making process to facilitate the decision to design a spacecraft to demise for an uncontrolled atmospheric reentry post-mission disposal option.
- Demonstration of DfD limitations and trade-offs using the propulsion and power spacecraft subsystems as illustrative cases.
- Moreover, [the petitioner]'s research proposed specific spacecraft hardware alteration methods to achieve demisability; demonstrated the application of reentry demisability analysis and interpretation of the software analysis tools; and documented limitations of the current high-level [redacted] reentry software analysis tool referred to as Debris Analysis Software (DAS).

Exciting findings and proposals from this scrutiny of all major aspects related to designing spacecraft to demise have been submitted in two full-length manuscripts for publication in the AIAA Journal of Spacecraft and Rockets. These findings will serve to stimulate a wholesome structured insight into spacecraft DfD by [redacted] and the space industry worldwide.

The petitioner's research manuscripts published after September 28, 2009 do not constitute evidence that his findings were already influential as of that date. The petitioner must demonstrate his eligibility as of the filing date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). In this matter, that means that he must demonstrate his track record of success with some degree of influence on the field as a whole as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility.

Matter of Wing's Tea House, 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. at 49; *see also Matter of Izummi,* 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his as of yet unpublished research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008). Accordingly, manuscripts by the petitioner that were not published as of the date of filing and, thus, had not been subject to peer review and disseminated in the field as of that date, cannot establish eligibility for the waiver as of the date of filing. To hold otherwise would have the untenable result of an alien securing a priority date based on the speculation that his work might prove influential while the petition is pending.

[redacted] continues:

- [The petitioner] has also conducted research on transformation the normally non-linear and singular relative spacecraft dynamics modeling into linear and regular dynamics using KS-Canonical Transformation techniques. If these dynamics are successfully represented in the desired form, the errors due to the traditional Jacobean linearization approximation techniques will be eliminated. Though I was not his research supervisor on this problem, I am aware that [the petitioner] has covered significant research ground and that a successful demonstration of this technique will significantly improve orbital motion representation and controller design. He should be given an opportunity to continue with this effort.
- I served as an advisor on an [redacted] and [redacted] project in which [the petitioner] participated as one of the research team members. The project involved the analysis, optimization, and trade studies for interplanetary space missions involving multiple sorties and space destinations. He was an impact team player who played an important role in the successful testing of the software application developed according to IEEE 829 software testing standard.

While the research the petitioner conducted under the direction of [redacted] is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any graduate or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every graduate student who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

[redacted] states:

I have been [the petitioner's] research advisor during the investigation he conducted on establishing a sustainable space sector in Kenya.

* * *

[The petitioner] undertook a novel research in technology and innovation policy by investigating the establishment of an entire space sector in a developing country-Kenya. This subject had never been investigated from this angle before and the results have so far generated a lot of excitement both in Kenya and the U.S. State Department. . . . Though a number of authors have proposed generic approaches to establishing a space industry in a developing country, none of these approaches is specific to a particular developing country. . . . While examining Kenya's case, [the petitioner] exhaustively investigated why Kenya needs a vibrant domestic space sector; the challenges in establishing a local space sector; and, lessons from other space programs in industrially developing countries. He then proposed a chronological phase-by-phase technological capability evolution for the Kenya space sector; and, the sector organizational framework detailing the functions of constituent framework elements. He further identified Kenya's priority areas as: grasping satellite engineering; Earth observation; and, acquiring launch capability. Moreover, he expounded on the significance of partnerships for technology transfer and regional development. [The petitioner's] research has been documented and is about to be submitted to the prestigious globalization and technology journal as a full-length paper for publication. This work will not only guide Kenya in establishing a space sector but other developing countries with similar challenges will definitely benefit from the level of detail involved.

* * *

[The petitioner's] research on establishment and utilization of space based technology for sustainable development in Kenya directly supports the U.S. State Department objectives by explaining space sector aspects the state department can exploit to meet its foreign cooperation objectives. It is no wonder that his work has been warmly received. His Kenyan background coupled with world-class training and experience in the Western space technology arena makes him a valuable asset for the U.S. government. Moreover, his novel research distinguishes his abilities as rare.

[redacted] asserts that the petitioner's work has "generated a lot of excitement both in Kenya and the U.S. State Department," but there is no evidence (such as an official letter of support from an authorized representative of the U.S. State Department) indicating that the petitioner's proposals have actually been implemented in the field. Further, regarding [redacted] comments about the petitioner's training and experience in space technology, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

The director requested further evidence that the petitioner had met the guidelines published in *NYSDOT*. In response, the petitioner submitted a letter written by him to USCIS, additional letters of support, two e-mails from [redacted] contracted by the U.S. Department of State), "SpaceNet v1.3 Usability Test Documentation," an acknowledgement by the authors of the *SpaceNet v1.3 User's Guide* that the petitioner and four others performed testing of SpaceNet v1.3, a self-serving list of the petitioner's "Cited Work & Publications," and material identifying the petitioner as a member of the [redacted] While the petitioner helped test the SpaceNet v1.3 system (a framework and software tool) and served briefly as a member of the [redacted], there is no evidence showing that his particular contributions on these projects had a notable influence on the field as whole.

The e-mails from [redacted] to the petitioner state that, in his capacity as a contractor, [redacted] cannot write a letter of recommendation on the petitioner's behalf. [redacted] briefly comments that the petitioner's work is "very interesting" and "*potentially* beneficial." [Emphasis added.] A petitioner, however, cannot file a petition under this classification based solely on the expectation of future eligibility. *See Matter of Katigbak,* 14 I&N Dec. at 49. [redacted] e-mail exchanges with the petitioner do not provide specific examples of how the petitioner's work has already impacted the field.

The petitioner states:

> Not only am I a member of [redacted] and [redacted]); my outlined research achievements are indeed unprecedented which put forward a strong case for a favorable decision.
>
> I have been a recipient of several awards which include; [redacted] for academic excellence while at [redacted] graduate fellowship award while at [redacted] and [redacted] while at [redacted] Moreover, throughout my entire stint at [redacted] I was a recipient of the graduate Research Assistantship award every semester. This sequence of awards undoubtedly portrays a history of continued recognition that consistently distinguishes me from my peers.

Aside from the petitioner's failure to submit documentary evidence of his awards and memberships from the preceding organizations, there is no evidence showing that his admission to membership in the above organizations and his receipt of the above awards required significant research contributions in his field. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). With regard to the awards and memberships claimed by the petitioner, the AAO notes that recognition for achievement in one's field and professional association memberships relate to the regulatory criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification.

8 C.F.R. § 204.5(k)(3)(ii). The AAO cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest. By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Thus, the *benefit* which the alien presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id.; see also id.* at 222.

[redacted], an engineer at the [redacted] and a [redacted] (2005-06), states:

> In my position as a visiting professor at the [redacted] in the fall of 2006, [the petitioner] worked with me when he was a graduate student, participating in an engineering design project to develop a method for returning a sample from the surface of the planet Mars, utilizing rocket propellant manufactured from the Martian atmosphere. The work done by [the petitioner] in this project was of high quality, and was (and still is) of exceptional interest to the development of space exploration. The work resulted in several papers published in peer-reviewed aerospace conferences.

Although [redacted] states that the petitioner's "work resulted in *several* papers published in peer-reviewed aerospace conferences," the evidence submitted by the petitioner includes evidence of only one conference paper by the petitioner and six coauthors presented at the [redacted] Space 2007 Conference & Exposition. The documentation submitted by the petitioner does not establish that the petitioner had published any other papers in peer-reviewed aerospace conferences as of the petition's September 28, 2009 filing date. As previously discussed, a petitioner must establish his eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Further, there is no evidence showing that the findings presented by the petitioner's research team at the AIAA Space 2007 Conference & Exposition have been frequently cited or have otherwise influenced the field as a whole.

The petitioner's response included a document entitled "Cited Work & Publications," but the source of the three citations compiled by the petitioner in the document is not identified. Rather than submitting evidence of citation records originating from an official source (such as an online scientific database) or copies of the actual articles referencing his work, the petitioner instead submitted a self-serving list of three articles purportedly citing to his body of work. USCIS need not rely on self-serving documentation.[2] Further, as previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Even if the AAO accepted the petitioner's self-serving list showing an aggregate of three cites to his body of work, no

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[2] *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

single article by the petitioner has garnered more than two citations. Ultimately, the limited number of citations to the petitioner's articles is not indicative of a notable influence in the field.

[redacted] continues:

> [The petitioner] has shown exceptional talent and made technical contributions in the engineering of space systems. These include participating in the design of a space mission to retrieve a Martian soil sample and return it to Earth by utilizing the available Martian atmosphere as a resource for production of fuel, and in designing spacecraft to safely re-enter the Earth atmosphere without production of debris or hazards to the ground. The issue of designing space missions that reenter the earth atmosphere to completely ablate despite the nature of the spacecraft is a crucial one indeed, and currently being duly investigated by [redacted] among other space agencies globally.
>
> These projects are of significant interest to [redacted]
>
> * * *
>
> [The petitioner's] research has resulted in a number of papers published in professional conferences, and in the submission of two full-length papers to refereed technical journals.
>
> * * *
>
> The design of spacecraft to utilize the resources on Mars to reduce the cost and complexity of space missions is a significant technical problem being addressed by [redacted] in its exploration mission, and Waswa's work on this subject has contributed to [redacted] mission.

There is no documentary evidence indicating that the space systems engineered by the petitioner have been utilized by [redacted] for its space missions or have been successfully applied by other research engineers in their work. Further, there is no evidence showing that the petitioner's research findings have been frequently cited by independent scholars or have otherwise influenced the field as a whole.

[redacted], states:

> [The petitioner] undertook a holistic investigation on how to design uncontrolled reentry space missions by simply making them demisable – i.e. to completely ablate during the harsh thermoaerodynamic reentry phase. His research hinges on a guaranteed adherence to strictly stipulated [redacted] earth atmospheric reentry guidelines without incorporating the traditionally costly reentry subsystem. Such a mission would be relatively simpler; hence, not only cheaper but also possess improved on-orbit reliability and robustness.

Up-to-date, no demisable mission has been designed and launched which makes his research extremely essential to this country because NASA is presently engaged in this subject. Consequently, [the petitioner's] work has made numerous outstanding contributions in this nascent area. [The petitioner's] research focused on spacecraft subsystems design-for-demise trade-offs, ablation analyses and limitations; and, spacecraft design-for-demise implementation strategy and decision-making methodology for [redacted] Low-Earth-Orbit Missions.

[The petitioner] detailed modification methods for specific spacecraft hardware parts to achieve demisability; and, demonstrated the limitations and trade-offs of designing spacecraft for demise using two spacecraft subsystems – propulsion and power subsystems. Moreover, using currently available reentry software analysis tools, he demonstrated the application of reentry analysis for design-for-demise and interpretation of the results. He also added to the documentation of the limitations of the current high level [redacted] reentry software analysis tool referred to as Debris Analysis Software (DAS).

He developed a technique to systematically identify and isolate exhaustively those parts in a spacecraft that are likely to contribute majorly towards the spacecraft surviving the reentry ablation process and eventually impact earth's surface. Consequently, this technique will facilitate the expeditious isolation and re-design of these critical components.

His research proposed a decision making methodology referred to as [redacted] decision making process to facilitate the decision-making process in designing an uncontrolled atmospheric reentry space mission to demise. [The petitioner] further proposed a fresh space mission phase-by-phase implementation strategy that spans the entire mission life-cycle which guarantees a comprehensive treatment to achieve a demisable space mission. To complement this implementation strategy, [the petitioner] also recommended a novel detailed procedure to execute the design-for-demise activities in a particular phase of the mission life-cycle to ascertain a sustained methodical employment of design-for-demise practices in space mission development and execution. [The petitioner] has submitted his work for publication in two manuscripts that address – spacecraft Design-for-Demise strategy, analysis and impact on [redacted] space missions.

While cross-registered at [redacted] [the petitioner] researched on space technology and innovation policy focusing on establishing an entire space sector from scratch for sustainable development in a developing country. In this ground-braking research, [the petitioner] detailed how developing countries can initiate, develop and employ space technology to expeditiously address fundamental national developmental needs such as; health, education, food security, environmental and natural resource management. By focusing on a particular developing country; Kenya, [the petitioner's] work unprecedentedly tackled this subject in a holistic manner. He proposed

a chronological, phase-by-phase space technology capability evolution; the fledgling sector organizational framework detailing the roles of constituent elements; he identified Kenya's space sector priority areas; and, expounded on the significance of partnerships for technology transfer and regional development. Though focused on industrially developing countries, this work is extremely important to the interest of the United States foreign assistance objectives meant to respond to global needs through agencies like the State Department and USAID.

Another aeronautical engineering area that [the petitioner] has made outstanding national contribution is in designing space missions that retrieve samples from other planets e.g. Mars and safely return them to earth. Such missions have incessantly preoccupied [redacted] and the astronautical scientific community at large. In collaboration with other colleagues, [the petitioner's] research proposed how to retrieve a Martian sample by using resources from the planet to constitute part of the propulsion elements. This is practice referred to as In-Situ Resource Utilization proposes ways that sample return missions can be relatively efficiently and cost-effectively undertaken. He was responsible for designing optimal orbital trajectories for the mission and the sample return spacecraft.

[redacted] repeats the information provided in [redacted] letter. The AAO notes that, according to the petitioner's Form ETA-750B, the petitioner worked as a visiting researcher at the [redacted] in 2005.

The letters from [redacted] and [redacted] do not provide specific examples of how the petitioner's technique to systematically identify spacecraft parts likely to contribute to spacecraft survival during the reentry ablation process is being utilized by [redacted] or is being applied by others in the field. Further, there is no evidence demonstrating that the petitioner's Analytic Deliberative Process decision making process, his phase-by-phase implementation strategy that spans the entire mission life-cycle, or his procedure to execute the design-for-demise activities in a particular phase of the mission life-cycle have been utilized by any space missions. Moreover, the petitioner has not submitted documentary evidence indicating that his DfD methodologies or his policies for space technology capability evolution in developing countries have been frequently cited or have otherwise impacted the field.

The director denied the petition finding that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director stated that the petitioner had not submitted evidence documenting "an impact in the field" or distinguishing his work from that of his peers.

On appeal, the petitioner argues that the director erred in the denying the petition based on his "number of publications" and "minimal citation record." The AAO acknowledges that independent citations are not the only means by which to show the petitioner's impact on his field. Independent witness letters can play a significant role in this respect. Here, however, the petitioner has submitted reference letters limited to his academic advisors and to individuals

affiliated with institutions where he has studied or worked. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish his influence beyond his institutions and over the field as a whole. Moreover, simply listing the petitioner's novel research findings cannot suffice in this regard, because all graduate students are arguably expected to produce original work.

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a space systems engineer who has influenced the field as a whole.

While the petitioner has performed admirably on his research projects at [redacted] the [redacted], and the [redacted] he has not established that his past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The AAO notes that the petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.")

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.